

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HEATH VINCENT FULKERSON.

Case No. 3:20-cv-00400-MMD-CLB

Plaintiff,

ORDER

STATE OF NEVADA DEPARTMENT
OF BUSINESS AND INDUSTRY, *et al.*

Defendants.

In this case, *pro se* Plaintiff Heath Vincent Fulkerson attempts to sue the Nevada Department of Business and Industry and the Hartford Financial Insurance Group for insufficiently paying out on purported worker's compensation claims. Before the Court is the Report and Recommendation ("R&R" or "Recommendation") of United States Magistrate Judge Carla L. Baldwin (ECF No. 4), primarily recommending upon screening his proposed complaint that his proposed claims be dismissed with leave to amend for failure to state a claim. Plaintiff had until October 23, 2020 to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R, and will primarily dismiss Plaintiff's Complaint with leave to amend.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); see also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory

1 Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no
2 clear error on the face of the record in order to accept the recommendation.”).

3 Because there is no objection, the Court need not conduct de novo review, and is
4 satisfied Judge Baldwin did not clearly err. Here, Judge Baldwin recommends the Court
5 grant Plaintiff’s application to proceed *in forma pauperis* because Plaintiff appears unable
6 to pay the filing fee. (ECF No. 4 at 2.) Judge Baldwin then recommends Defendant the
7 Nevada Department of Business and Industry be dismissed with prejudice because it is
8 entitled to Eleventh Amendment sovereign immunity. (*Id.* at 4-5.) Judge Baldwin next
9 recommends Plaintiff’s bad faith claims against Defendant the Hartford Financial
10 Insurance Group be dismissed without prejudice, and with leave to amend, because
11 Plaintiff’s proposed Complaint contains insufficient factual allegations to state a claim. (*Id.*
12 at 5-6.) Judge Baldwin finally recommends granting Plaintiff’s motion to submit complaint
13 (ECF No. 1-2). (ECF No. 4 at 6.) The Court agrees with Judge Baldwin. Having reviewed
14 the R&R and the record in this case, the Court will adopt the R&R in full.

15 It is therefore ordered that Judge Baldwin’s Report and Recommendation (ECF
16 No. 4) is accepted and adopted in full.

17 It is further ordered that Plaintiff’s application to proceed *in forma pauperis* (ECF
18 No. 1) is granted.

19 It is further ordered that Plaintiff’s motion to submit complaint (ECF No. 1-2) is
20 granted.

21 The Clerk of Court is directed to file Plaintiff’s Complaint (ECF No. 1-1).

22 It is further ordered that Defendant the State of Nevada Department of Business
23 and Industry is dismissed from this case with prejudice.

24 It is further ordered that Plaintiff’s Complaint is dismissed without prejudice, and
25 with leave to amend, as to Defendant the Hartford Financial Insurance Group.

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1 It is further ordered that, if Plaintiff chooses to file an amended complaint against
2 Defendant the Hartford Financial Insurance Group, he must file that complaint within 30
3 days of the date of entry of this order.

4 It is further ordered that the amended complaint must be complete in and of itself
5 without referring to, or incorporating by reference, any previous complaint. Any
6 allegations, parties, or request for relief from a prior complaint that are not carried forward
7 in the amended complaint will no longer be before the Court. Plaintiff must also clearly
8 title the amended pleading "AMENDED COMPLAINT."

9 It is further ordered that, if Plaintiff fails to file an amended complaint within 30 days
10 of the date of entry of this order, the Court will dismiss this case in its entirety, with
11 prejudice.

12 DATED THIS 2nd Day of November 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE